

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

Plaintiff,

**DECISION and ORDER**

-vs-

23-CR-6087 CJS/MWP

KHYREE M. BAKER,

Defendant.

---

This case was referred by text order of the undersigned, entered April 20, 2023, to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B), ECF No. 17. On May 30, 2023, Defendant filed an omnibus motion, ECF No. 23, seeking *inter alia* a dismissal of the indictment on the basis that “the offense charged, 18 U.S.C. § 922 (g)(1) is unconstitutional on its face and as applied to him.” ECF No. 23, Defendant’s Notice of Motion, p.2. On July 17, 2023, Magistrate Judge Payson filed a Report and Recommendation (“R&R”), ECF No. 29, recommending that Defendant’s application to dismiss the indictment be denied. On July 26, 2023, Defendant timely filed objections, ECF No. 31 to Magistrate Judge Payson’s R & R. Specifically, Defendant maintained “that Judge Payson did not engage in the historical analysis required by the Supreme Court in *N.Y. Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022) and did not hold the government to its burden.” ECF No. 31 Objections to Report & Recommendation of July 12, 2023, p.1.


As to Defendant’s application to dismiss the indictment, this Court must, pursuant to 28 U.S.C. § 636(b)(1), make a *de novo* determination of those portions of the R&R to which objections have been made. Upon a *de novo* review of the R&R, the Court accepts the proposed findings and recommendations.

Accordingly, for the reasons set forth in Magistrate Judge Payson's R&R, ECF No. 29, Defendant's application to dismiss the indictment is denied.

IT IS SO ORDERED.

Dated: August, 25, 2023  
Rochester, New York

ENTER:

  
\_\_\_\_\_  
CHARLES J. STRAGUSA  
United States District Judge